

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENT W. PORTER Sr.,

Plaintiff,

v.

RUSTY SMITH,

Defendant.

Case No. C05-5315RJB

ORDER GRANTING
PLAINTIFF'S MOTION TO
DISMISS WITHOUT
PREJUDICE

This matter comes before the court on the Report and Recommendation of the Magistrate Judge (Dkt. 18) and on plaintiff's motion to dismiss without prejudice (Dkt. 15 and 16). The court has considered the relevant documents and the remainder of the file herein.

On April 24, 2006, U.S. Magistrate Judge J. Kelley Arnold issued a Report and Recommendation, recommending that defendant's motion for summary judgment be granted in this civil case, on the basis that plaintiff had failed to exhaust administrative remedies. Dkt. 18. On March 27, 2006, plaintiff filed a motion, requesting that the court dismiss this case without prejudice. Dkt. 15 and 16. Plaintiff stated that he is terminally ill and affected by a chronic liver infection, and that he is physically and mentally unable to proceed *pro se* in this litigation. Dkt. 16. Plaintiff did not file a response to defendant's motion for summary judgment; defendant did not file a response to plaintiff's motion to dismiss the case without prejudice.

The court concurs with the conclusion of the magistrate judge that plaintiff failed to exhaust administrative remedies, and that any dismissal of the case on this basis should be without prejudice.

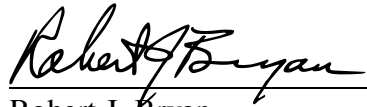
1 Plaintiff has requested a dismissal without prejudice, and defendant has not filed opposition to that
2 motion. Accordingly, the court should grant plaintiff's motion to dismiss the case without prejudice.
3 The Report and Recommendation is moot.

4 Therefore, it is hereby

5 **ORDERED** that plaintiff's motion to dismiss (Dkt. 15 and 16) is **GRANTED**. This case is
6 **DISMISSED WITHOUT PREJUDICE**. The Report and Recommendation (Dkt. 18) is moot.

7 The Clerk is directed to send uncertified copies of this Order to all counsel of record, to any
8 party appearing *pro se* at said party's last known address, and to U.S. Magistrate Judge J. Kelley
9 Arnold.

10 DATED this 26th day of May, 2006.

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12 Robert J. Bryan
13 United States District Judge
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